

AMENDMENT NUMBER ONE

TO AN AGREEMENT

BETWEEN

THE CITY OF FRISCO, TEXAS (CITY)

AND

DANNENBAUM ENGINEERING CORPORATION – DALLAS, LLC (CONSULTANT)

FOR

CONSTRUCTION PHASE ENGINEERING SERVICES

Made as of the _____ day of _____ in the year Two Thousand Nine:

BETWEEN the City: **The City of Frisco, Texas**
6101 Frisco Square Boulevard
Frisco, Texas 75034
Telephone: (972) 292-5400
Facsimile: (972) 292-5016

and the Consultant: **Dannenbaum Engineering Corporation – Dallas LLC**
4141 Blue Lake Circle, Suite 240
Dallas, Texas 75244
Telephone: (972) 239-2002
Facsimile: (972) 239-1616

for the following Project: **Construction Phase Engineering Services for FM 2934
(Dallas North Tollway – FM 423) Roadway and Drainage
Improvements**

The City and the Consultant agree as set forth below.

THIS AMENDMENT NUMBER ONE is made and entered by and between the **City of Frisco, Texas**, a Home-Rule Municipal Corporation, hereinafter referred to as “City,” and **Dannenbaum Engineering Corporation – Dallas, LLC.**, hereinafter referred to as “Consultant,” to be effective from and after the date as provided herein, hereinafter referred to as “Amendment Number One.”

WHEREAS, the City and Consultant desire to amend the Agreement for the purpose of extending the scope of the Project (defined in the Agreement) to include

revising the amount of the final payment of the Consultant's Fee (defined in the Agreement) allocated towards the completion of the Record Documents for the project; revising the percentage of Consultant's Fee (defined in the Agreement) allocated toward the completion of the requirements associated with the Texas Architectural Barriers Act (the "Barriers Act") and ensuring the City's receipt of the Notice of Substantial Compliance for the Project, issued by the Texas Department of Licensing and Regulation (the "TDLR"); which agreement is incorporated herein by reference as if fully set forth herein, hereinafter referred to as "Amendment Number One;" and

WHEREAS, the City and Consultant desire to amend the Agreement as hereinafter set forth.

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

That for and in consideration of the covenants contained herein, the mutual benefits to be obtained hereby and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Consultant do mutually agree as follows:

1. **Amendment to Agreement, Article 3, Section 3.1, Compensation for Consultant's Services** – Article 3, Section 3.1 of the Agreement is hereby amended as follows:

"3.1 **Compensation for Consultant's Services** – As described in "Article 1, Consultant's Services," compensation for this Project shall be on a Lump Sum and Hourly Basis, for an amount not to exceed ~~One Hundred Seventeen Thousand Two Hundred Twenty Six and 40/100 Dollars (\$117,226.40)~~ **One Hundred Sixty-Seven Thousand Two Hundred Twenty-Six and 40/100 Dollars (\$167,226.40)** ("Consultant's Fee") and shall be paid in accordance with Article 3 and the Compensation Schedule / Project Billing / Project Budget as set forth in Exhibit "B."

2. **Amendment to Agreement, Article 3, Section 3.1.1, Completion of Record Documents** – Article 3, Section 3.1.1 of the Agreement is hereby amended as follows:

"3.1.1 **Completion of Record Documents** – City and Consultant agree that the completion of the Record Documents and/or "As-Built" Documents, including hard copy formatting and electronic formatting, shall be completed, submitted to, and accepted by the City prior to payment of the final ~~five (5.0%)~~ **one and eleven tenths percent (1.11%)** of the Consultant's Fee, or Four Thousand Three Hundred Nine and 00/100 Dollars (\$1,857.00). The electronic formatting shall be consistent with the standards established in Exhibit "C," City of Frisco Guidelines for Computer

Aided ~~Design and Drafting~~ Drafting and Design (“CADD”). Completion of the Record Documents and/or “As-Built” documents shall be included in the Consultant’s Fee and considered to be within the Scope of Services defined under this Agreement.”

- 3. **Amendment to Agreement, Article 3, Section 3.1.4.6, TDLR Notice of Substantial Compliance**– Article 3, Section 3.1.4.6 of the Agreement is hereby amended as follows:

“3.1.4.6 **TDLR Notice of Substantial Compliance** – TDLR shall provide a Notice of Substantial Compliance to the City after the newly constructed Project has had a satisfactory inspection, or Consultant has submitted verification of corrective modifications. City and Consultant agree that the final ~~five (5.0%)~~ **one and eleven tenths percent (1.11%)** of the Consultant’s Fee, or Four Thousand Three Hundred Nine and 00/100 Dollars (\$1,857.00) of the Consultant’s Fee, shall not be paid until the City is in receipt of the TDLR’s Notice of Substantial Compliance for all Project components and/or phases of the Project.”

- 4. **Amendment to Exhibit “B,” Compensation Schedule / Project Billing / Project Budget.** Exhibit “B,” Compensation Schedule / Project Billing / Project Budget is hereby amended as follows:

“...I. **COMPENSATION SCHEDULE / PROJECT BILLING SUMMARY.**

MONTH, DATE, YEAR	DOLLAR AMOUNT	TASK COMPLETED
December 31, 2009	\$ 37,497.00	Task One, Roadway Design Revisions (Task Completed and all task-related deliverables completed as stated in Exhibit “A” and accepted by the City).
	\$ 87,497.00	
	\$167,226.40	

- 5. **Complete Agreement.** This Amendment Number One constitutes the entire Agreement by and between the parties regarding the subject matter hereof and supersedes all prior and/or contemporaneous written and/or oral understandings. This Amendment Number One may not be amended, supplemented, and/or modified except by written agreement duly executed by both parties.

- 12. **Counterparts.** This Amendment Number One may be executed in a number of identical counterparts. If so executed, each of such

counterparts is to be deemed an original for all purposes, and all such counterparts shall, collectively, constitute one Amendment Number One. A facsimile signature will also be deemed to constitute an original if properly executed.

13. **Controlling Agreement.** To the extent any provision contained herein conflicts with the Agreement, the provisions contained herein shall supersede such conflicting provisions contained in the Agreement.
14. **Defined Terms / Ratification of Agreement.** Any term not defined herein shall be deemed to have the meaning ascribed to it under the Agreement. Except as expressly amended hereby, all of the terms, provisions, covenants and conditions of the Agreement are hereby ratified and confirmed and shall continue in full force and effect.
15. **Authority to Execute.** The individuals executing this Amendment Number One represent and warrant that they are empowered and duly authorized to so execute this Amendment Number One on behalf of the parties they represent.
16. **Entire Agreement / Amendment Number One.** This Amendment Number One, and the Agreement embody the entire agreement by and between the parties regarding the subject matter hereof. There are no oral understandings or agreements between the parties regarding the subject matter hereof.
17. **Venue.** The Agreement and Amendment Number One shall be governed by and construed in accordance with the laws of the State of Texas and shall be performable in Collin County, Texas.
18. **Assignment.** This Amendment Number One may not be assigned except as authorized in the Agreement.
19. **Appropriation of Funds.** Funds are not presently budgeted for City's performance under this Agreement beyond the end of the City's 2008-009 fiscal year. City will give Consultant sixty (60) days notice if funds for City's performance are not budgeted to continue beyond that time. City shall have no liability for payment of any money for services performed after the end of City's 2008-2009 fiscal year unless and until such funds are budgeted.

IN WITNESS WHEREOF, the parties have executed this Amendment Number One to the Agreement, and caused this Amendment Number One to be effective on the latest day as reflected by the signatures below.

Effective Date: _____

CITY

City of Frisco, Texas

CONSULTANT

Dannenbaum Engineering Corporation

By: _____
George Purefoy

By: _____
Mark C. Lorance, P.E.

Title: City Manager

Title: President

APPROVED AS TO FORM:

Abernathy, Roeder, Boyd, & Joplin, P.C.

STATE OF TEXAS:

COUNTY OF COLLIN:

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS, ON THIS DAY PERSONALLY APPEARED **GEORGE PUREFOY**, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATION EXPRESSED, AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS ____ DAY OF _____, 2009.

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: _____

STATE OF TEXAS:

COUNTY OF _____:

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS, ON THIS DAY PERSONALLY APPEARED **MARK C. LORANCE P.E.**, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATION EXPRESSED, AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS ____ DAY OF _____, 2009.

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: _____